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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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12 ROBERT E. HARWELL, JR.,

13 Plaintiff,

No. CIV. S-04-0534-LKK-PAN

14 vs.

15 JO ANNE B. BARNHART,  
16 Commissioner of Social  
Security,

ORDER

17 Defendant.  
18 \_\_\_\_\_/

19 On August 15, 2005, I adopted the magistrate judge's findings  
20 and recommendations and granted plaintiff's motion for summary  
21 judgment. On August 30, the Commissioner filed a "Motion to Alter  
22 or Amend Judgment."

23 In the judgment at issue, I reversed the administration's  
24 decision on the ground the ALJ improperly relied on x-rays to  
25 discredit plaintiff's complaints of pain and fatigue due to  
26 fibromyalgia, depression and obesity--impairments which the ALJ

1 found severe. Plaintiff complained his pain and fatigue impaired  
2 his abilities to stand, walk, sit, bend, lift, use his arms,  
3 tolerate people, concentrate and remember. The ALJ found  
4 plaintiff's assertions "not fully credible in light of  
5 discrepancies between his statements and the information contained  
6 in the documentary reports," relying in significant part upon a  
7 series of x-rays demonstrating minimal objective findings. X-rays  
8 do not discredit a claimant's subjective complaints of pain  
9 accompanying depression, fibromyalgia or obesity. Nor did the  
10 further objective medical findings recounted by the ALJ. The ALJ  
11 failed to undertake the ponderous credibility assessment required  
12 by 20 C.F.R. § 404.1529 and S.S.R. 96-7p; rather, his reliance  
13 without analysis upon the medical evidence suggested his findings  
14 were both unreliable and pretextual.

15 Nothing in the Commissioner's motion leads me to a different  
16 result. Accordingly, the motion is denied.

17 So ordered.

18 DATED: September 1, 2005.

19 /s/Lawrence K. Karlton  
20 LAWRENCE K. KARLTON  
21 SENIOR JUDGE  
22 UNITED STATES DISTRICT COURT  
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